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REFERENCE #

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

G-I HOLDINGS INC.,

Debtor.

Chapter 11

Case No. 00-____ ()

**AFFIDAVIT OF RICHARD A. WEINBERG IN SUPPORT OF
FIRST DAY APPLICATIONS**

STATE OF NEW YORK)
) SS:
CITY OF NEW YORK)

Richard A. Weinberg, being duly sworn, deposes and says:

1. G-I Holdings Inc ("G-I" or the "Debtor") is commencing with
this Court a voluntary case under chapter 11 of title 11, United States Code (the

"Bankruptcy Code"). G-I will be a debtor in possession authorized to operate its business and manage its property pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. I am the Chief Executive Officer and President of G-I, having served in such capacity for G-I and its predecessors since September 2000. From May 1998 through September 2000, I was Executive Vice President and General Counsel of G-I. I am familiar with the day-to-day operations, business and financial affairs of G-I. I submit this affidavit to assist the Court and other parties in interest in understanding the circumstances that compelled the commencement of G-I's chapter 11 case and in support of the first-day applications.¹ Except as otherwise indicated, all facts set forth in this affidavit are based on my personal knowledge, my review of relevant documents, my reliance (in the customary performance of my duties as a corporate officer) on investigations conducted by other corporate officers, or employees under my supervision, or my opinion based upon my experience, knowledge and information concerning the operations and financial affairs of G-I, the building materials industry as a whole and the asbestos situation in the building materials industry.

3. Part I of this affidavit describes G-I and the circumstances surrounding the commencement of its chapter 11 case. Part II sets forth the relevant facts in support of the first-day motions and applications.

I. BACKGROUND

4. G-I is a holding company which directly owns BMCA Holdings Inc. and indirectly owns 33 subsidiaries, most of which are engaged in some aspect of the

¹ Any capitalized term used herein, but not expressly defined herein, shall have the meaning ascribed to such term in the respective first-day application.

building materials industry.² G-I's principal asset is its indirect ownership of Building Materials Corporation of America ("BMCA"). BMCA was incorporated under the laws of Delaware in 1994 and is a 99.9% owned subsidiary of BMCA Holdings Corporation, which is a 98.5% owned subsidiary of GAF Building Materials Corporation ("GAFBMC"). BMCA is the country's leading manufacturer of premium residential and commercial roofing products.

5. BMCA's sales of residential roofing products constituted approximately 65% of its net sales in 1999 making it one of the leading manufacturers of premium residential roofing products. BMCA's two principal lines of residential roofing shingles are the Timberline Series and the Sovereign Series. The Timberline Series offers a premium laminated product that adds dramatic shadow lines and substantially improves the appearance of a roof. The Sovereign Series is designed to capitalize on the middle market for quality shingles. In addition to shingles, the Residential Roofing lines offer the components necessary to install a complete roofing system.

6. The Commercial Roofing line manufactures a full line of modified bitumen and asphalt built up roofing products, liquid applied membrane systems and roofing accessories for use in the application of commercial roofing systems. Sales from commercial roofing products represented 27% of BMCA's net sales in 1999. BMCA also manufactures glass membranes, base sheets, flashings and other roofing accessories.

² To facilitate administrative efficiency, effective October 31, 2000, the following occurred: GAF Corporation, the former parent of BMCA and BMCA Holdings merged into its direct subsidiary, G-I Holdings Inc. ("G-I Holdings"); G-I Holdings then merged into its direct subsidiary, GAF Fiberglass Corporation, whose name was changed in the merger to GAF Corporation. Effective November 13, 2000, GAF Corporation (formerly known as GAF Fiberglass Corporation) merged into its direct subsidiary, GAF Building Materials Corporation whose name was changed in the merger to G-I Holdings Inc. (the "Debtor"). The Debtor is now the parent of BMCA and BMCA Holdings Corporation of America, two non-debtor subsidiaries.

Events Leading to G-I's Chapter 11 Filing

7. Faced with a continuous stream of asbestos claims primarily from individuals who show no asbestos related impairment, and the recent bankruptcy filings of four other major asbestos defendants, G-I has been forced to succumb to the financial pressure surrounding it and seeks protection from its creditors under chapter 11 of the Bankruptcy Code. G-I hopes to achieve through the chapter 11 process a viable and final resolution to its alleged asbestos liability while at the same time preserving the value of its business enterprise and allocating it fairly to G-I's creditors and shareholders. Despite retaliation from asbestos plaintiffs' lawyers in the form of increased demands for settlement, G-I remains committed to effectuating a comprehensive resolution to its alleged asbestos liability.

8. Although G-I believes it has no asbestos liability to almost all of the thousands of asbestos claimants, the Law of Large Numbers has compelled G-I to pay hundreds of millions of dollars to settle these claims. The Law of Large Numbers describes the dynamics involved in dealing with batches of thousands of asbestos claims filed against G-I. In short, because huge numbers of unimpaired claimants are "bundled" with the few truly impaired claimants, whose cases are held hostage to "group settlements," G-I is therefore required to settle thousands of claims based on economic rationality and not the merits of the claims. The recurrence of large batches of claims makes litigation in the tort system outside bankruptcy impractical for the most part.

9. Asbestos plaintiffs' lawyers have inundated the judicial system with a continuous stream of asbestos personal injury claims, often generated through mass advertising and free screenings in an attempt to pressure asbestos defendants into agreeing to mass settlements whose primary beneficiaries are the asbestos lawyers

themselves. G-I in particular has experienced a marked increase in the number of asbestos personal injury claims from those who show no asbestos related impairment in retaliation for its support of a Congressional solution to the asbestos litigation crisis. As of October 1, 2000, G-I was defending approximately 148,800 pending asbestos claims. During the first nine months of this year, G-I has received notice of the filing of approximately 41,700 new asbestos claims.

G-I's Connection to Asbestos is Tenuous at Best

10. Asbestos is a generic name given to a group of natural fibrous materials with several useful properties, including strength and resistance to heat. Through the late 1960s, asbestos was widely used in the United States in numerous military, industrial and commercial applications, including the production of high-temperature thermal insulation and as a fire retardant.

11. G-I's only connection to asbestos arises out of a 1967 merger of General Aniline and Film Corporation with The Ruberoid Company ("Ruberoid") (the "1967 Merger"). Prior to 1967, General Aniline and Film was engaged in the development, manufacture and sale of photographic and chemical products, including the popular Viewmaster Viewers. Ruberoid began as a manufacturer of rubber-like roofing products which did not contain asbestos. At the request of the United States Navy during World War II, Ruberoid began producing, in accordance with military specifications, Calsilite, an asbestos insulation product used on United States' naval ships. After the United States Public Health Service concluded Calsilite was safe, Ruberoid began to supply the product to naval shipyards around the country pursuant to requisition in accordance with government specifications.

12. After the 1967 Merger, General Aniline and Film, which subsequently changed its name to GAF Corporation, designed an asbestos free product similar to Calsilite which was rejected by the Navy. The Company ceased production of Calsilite by 1971.

13. Total sales of Calsilite were estimated to be no more than \$35 million, most of which was sold to the U.S. Navy. Profits on the sale of Calsilite for the thirty year period are estimated to be no more than \$1 million.

14. In 1989, GAF Corporation was liquidated and its assets and liabilities were thereafter acquired by GAFBMC. The GAF Corporation that has been named as a defendant in tens of thousands of asbestos lawsuits came into existence in 1987 and was the indirect corporate parent of GAFBMC. That GAF Corporation, now, G-I, defends asbestos claims in its own name

G-I 's Historical Settlement Policy

15. The United States Supreme Court has recognized that asbestos plaintiffs' lawyers have flooded the federal and state judicial systems with "an elephantine mass of asbestos cases" that "defies customary judicial administration." Ortiz v. Fibreboard Corp, 119 S.Ct. 2295, 2302 (1999). Unable to defend or even evaluate the merits of each claim on an individual basis, companies who once manufactured or sold asbestos containing products have been forced to buy-out asbestos plaintiffs' lawyers inventories of cases on a "bulk basis" compelling the settlement of meritless cases. This strategy has led to the bankruptcies of numerous asbestos defendants beginning with Johns-Manville Corporation ("Manville"), the largest U.S. manufacturer of construction products containing asbestos fibers. Today, over twenty-five companies have filed for bankruptcy, including, most recently, Owens Corning, Babcock & Wilcox, Pittsburgh

Coming and Armstrong World Industries, Inc. In the wake of these asbestos related bankruptcies, asbestos plaintiffs' lawyers have increased claims against the solvent companies who, like G-I, will eventually be forced to seek bankruptcy protection.

G-I's Membership in the CCR

16. In an effort to promote a policy of efficient processing of asbestos claims and to preserve resources for those claimants who are actually sick, G-I became a member of the Center for Claims Resolution (the "CCR") a non-profit organization established in 1988 to act as a claims handling facility originally for twenty (now believed to be fifteen or less) companies named as defendants in asbestos personal injury suits. In 1993, the CCR and representatives of the asbestos plaintiffs' bar reached a global settlement affecting all current and future asbestos claims asserted against its members (the "Georgine Settlement"). The Georgine Settlement was approved by the United States District Court for the Eastern District of Pennsylvania which had before it at the time the then pending federal asbestos cases. The Georgine Settlement was designed to assure prompt payment with reduced transaction costs to sick individuals and to defer payment of the claims of non-sick individuals until such time, if ever, that they became sick.

17. In Amchem Products, Inc v. Windsor, 117 S. Ct. 2231 (1997) the United States Supreme Court disapproved the Georgine Settlement on the ground it did not comport with the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Supreme Court, however, urged Congress to implement legislation to establish an asbestos dispute resolution system, on the ground that "a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure." Id., at 628-9. As can be seen from both

U.S. Supreme Court decisions disapproving class action settlements of asbestos claims (See Ortiz, 119 S.Ct. 2295, 2302 (1999); Amchem, 117 S. Ct. 2231 (1997)), the settlements are rendered illegal largely due to the insistence of the negotiating plaintiffs' attorneys on special treatment not afforded other attorneys and their clients.

18. After Amchem, the CCR began entering into futures agreements ("Futures Agreements") with asbestos plaintiffs' lawyers. The Futures Agreements embody the medical criteria set forth in Georgine, provide for an alternative dispute mechanism and the tolling of the statute of limitations for individuals who do not currently meet the Georgine medical criteria. The consideration for the Futures Agreements included CCR's agreement with the asbestos plaintiffs' lawyers to settle some 50,000 pending asbestos cases for approximately \$750 million. GAF contributed approximately \$200 million toward the \$750 million.

19. Despite the Futures Agreements, GAF, now, G-I continues to be inundated with claims filed by non-sick individuals at a greater rate than before the Futures Agreements. G-I attributes this counter intuitive result to a retaliation aimed at its support of a federal legislative resolution to the asbestos crisis

20. As of January 17, 2000, the CCR terminated GAF's membership in the CCR. G-I believes this termination was improper and was in retaliation for claims it currently has pending against the CCR. G-I is taking appropriate measures to protect its rights with respect to the unauthorized termination of its CCR membership and is pursuing claims against the CCR and its member companies for amounts it believes it has been overcharged on asbestos liability payments and for other improper actions,

including entering into unauthorized, and in some cases, ethically dubious and unenforceable settlements.

G-1's Support of Federal Legislation

21. G-I supports efforts to develop a comprehensive solution to the asbestos crisis, including proposed federal legislation entitled "Fairness in Asbestos Compensation Act" (the "Act"). The Act was introduced to Congress in 1999 and is co-sponsored by over 102 senators and congressmen. The Act is designed to compensate individuals who are currently sick and to defer resolution of "exposure-only" individuals until such time, if ever, that those individuals develop an asbestos-related illness. The Act eliminates the statute of limitations defense as a bar to recovery for non-sick claimants, caps the contingency fees of lawyers at 25%, reduces the legal fees and transaction costs associated with asbestos litigation which currently consume approximately 60 cents of every dollar spent on litigation, and expedites compensation of genuinely sick individuals, while preserving resources for claimants who develop asbestos-related illnesses in the future.

22. G-I actively supports the Act. G-I's chairman, Samuel Heyman testified before the House Judiciary Committee and the Senate Committee in support of the Act. Seemingly, in retaliation for its support of the Act, asbestos plaintiffs' lawyers have targeted G-I and flooded it with asbestos claims primarily from individuals who show no asbestos related impairment. While G-I remains committed to finding a resolution to the current asbestos crisis, it can no longer withstand the financial pressure being placed on it by the asbestos plaintiffs' lawyers grossly inflated demands. A restructuring under chapter 11 is G-I's only alternative.

II.

II. FACTS IN SUPPORT OF FIRST DAY APPLICATIONS

23. Concurrently with the filing of its chapter 11 petition, G-I is filing certain applications and proposed orders (collectively, the "First Day Orders") to help ensure the efficient resolution of its chapter 11 case. G-I requests that each of the First-Day Orders described below be issued because each constitutes a critical element in achieving the successful rehabilitation and reorganization of G-I for the benefit of all parties in interest.

Maintenance of Existing Business Forms and Bank Accounts

24. Prior to the Commencement Date and in the ordinary course of its business, G-I maintained bank accounts with the banks listed on Exhibit A to the applicable Application (the "Bank Accounts"). G-I would routinely receive either wire transfers of checks from various insurance companies which were deposited in the bank accounts and used for accounts payables or transferred to one or more of G-I's investment accounts. G-I's transition to chapter 11 will be smoother and more orderly if the Bank Accounts are continued postpetition with the same account numbers and if it is authorized to use its current correspondence and existing business forms.

Maintenance of Prepetition Investment Practices

25. Prior to the Commencement Date, and in the ordinary course of its business, G-I maintained investment accounts with the institutions listed on Exhibit A to the applicable Application (the "Investment Accounts"). G-I would routinely transfer all excess cash from its bank accounts to its investment accounts for investment into commercially reasonable, income producing investments. To enhance the value of the

assets of its estate, G-I desires to maintain its prepetition investment practices and to the extent required, receive a waiver under section 345(b) of the Bankruptcy Code.

Adequate Assurance to Utilities

26. In connection with the operation of its business, G-I obtains electricity, natural gas, water, telephone services, garbage collection and/or other similar services (collectively, the Utility Services") from different utility companies (the "Utility Companies") in New Jersey. In the aggregate, the utility bills of G-I average approximately \$2,000 per month.

27. As of this date, G-I believes it is current with all Utility Companies except to the extent that it has not yet been billed for prepetition utility services or it has been billed but payment for such services was not yet due as of the Commencement Date, or checks on account of such services were issued but will not be honored because of the commencement of G-I's case. G-I represents that it has the ability to pay for post-petition services on a current basis going forward and thus believes the Utility Companies are adequately assured.

**Authority to Mail Initial Notices and to File List of Creditors
Without Claim Amounts in Lieu of Matrix**

28. By this Application, G-I requests authority to (i) file with their chapter 11 petitions a list of creditors in lieu of the required label matrix and (ii) mail directly to creditors and other parties in interest a notice of the commencement of these cases and a notice of a meeting of creditors pursuant to section 341 of the Bankruptcy Code, as well as all other notices to creditors and other parties in interest as directed by the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

29. G-I has identified in excess of 100,000 claimants to which notice in accordance with the Local Rules must be provided. Transferring this information to the form of a label matrix described in the Local Rules would be a difficult and time consuming administrative task, would be exceedingly expensive and would increase the risk of recurrence of error with respect to such information.

Extension of Time to File Schedules and Statements

30. G-I has identified over 100,000 potential asbestos creditors who must be scheduled pursuant to Bankruptcy Rule 1007(b) and (c). Given the scope of asbestos creditors in this case, the fifteen day automatic extension of time to file its schedules and statements of financial affairs (collectively, the "Schedules") is not sufficient. Accordingly, G-I requires additional time to collect the data needed for the preparation of the Schedules.

31. At this juncture, I believe that an extension of forty (40) additional days (for a total of fifty-five (55) days) will provide sufficient time to prepare and file the Schedules.

Notice Procedures

32. By this Application, G-I requests approval to establish certain noticing procedures. G-I proposes to establish a Master Service List and limit notice of all matters covered by Bankruptcy Rule 2002 to the Master Service List with the express exception of the notice of (i) the first meeting of creditors pursuant to section 341 of the Bankruptcy Code; (ii) the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c); (iii) the time fixed for filing objections and the hearing to consider approval of a disclosure statement or confirmation of a plan of reorganization; and (iv) notice of and transmittal of ballots for accepting or rejecting a plan of reorganization.

33. The parties proposed to be included on the Master Service List are: (i) the Office of the United States Trustee for the District of New Jersey; (ii) G-I; (iii) the attorneys for G-I; (iv) the attorneys for the official committee of unsecured creditors; (v) the attorneys for any other committee appointed by the court; (vi) any party whose interests are directly affected by a specific pleading; (vii) those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002; and (viii) the Securities and Exchange Commission, the Internal Revenue Service and other government agencies to the extent required by the Bankruptcy Rules and the Local Rules.

Professional Retentions

34. **Counsel.** G-I has selected Weil, Gotshal & Manges LLP (WG&M") as its attorney because of the firm's knowledge of G-I's business and financial affairs and its extensive general experience and knowledge, and, in particular, its recognized expertise in the field of debtors' protections and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code. WG&M has represented G-I in various capacities for over twenty-five years. Accordingly, I believe that WG&M (i) has the necessary background to deal effectively with many of the potential legal issues and problems that may arise in the context of G-I's chapter 11 case, and (ii) is both well-qualified and uniquely able to represent G-I in its chapter 11 case in a most efficient and timely manner.

35. G-I has also selected Riker, Danzig, Scherer, Hyland & Peretti ("Riker Danzig") as their local counsel because of the firm's extensive knowledge of debtors' and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code, as well as its expertise, experience and knowledge practicing before

this Court, its proximity to this Court, and its ability to respond quickly to emergency hearings and other emergency matters in this Court. Riker Danzig's appearance before this Court for various motions, applications, and matters in this chapter 11 case will be efficient and cost-effective for G-I's estate. In preparation for the filing of G-I's chapter 11 case, Riker Danzig has become familiar with G-I's business and financial affairs. Accordingly, I believe that Riker Danzig is well-qualified to represent G-I throughout the course of its chapter 11 case.

36. G-I has also selected Sedgwick, Detert, Moran & Arnold (SDM&A") to serve as special counsel to assist G-I in the resolution of its asbestos personal injury claims. G-I has selected SDM&A because of its extensive experience in representing G-I in the prosecution and settlement of various asbestos claims. G-I believes that SDM&A is both well qualified and uniquely able to represent it throughout the course of its chapter 11 case in a most efficient and timely manner.

37. G-I has also selected Levett Rockwood PC ("Levett Rockwood") to perform certain necessary legal services in connection with asbestos property damage and personal injury asbestos claims, insurance coverage issues relating to asbestos claims and G-I's dispute with the CCR. Levett Rockwood has represented G-I in connection with the resolution of its asbestos claims for many years. Given its prior representation of G-I, G-I believes that Levett Rockwood is both well qualified and uniquely able to represent it during its chapter 11 case in a most efficient and timely manner.

38. G-I has also selected Friedman, Wang & Bleiberg, P.C. ("Friedman Wang") to assist in its prosecution and settlement of its claims against the CCR and related asbestos claims. Friedman Wang has represented G-I in connection

with the resolution of its asbestos claims for many years. Given its prior representation of G-I, G-I believes that Friedman Wang is both well qualified and uniquely able to represent it during its chapter 11 case in a most efficient and timely manner.

Accordingly, I believe Friedman Wang is well qualified to represent G-I in this chapter 11 case.

39. G-I has also selected The Law Offices of Joseph D. Pope ("JDP") to assist in the removal of personal injury asbestos claims pending against its subsidiaries. JDP has assisted G-I and BMCA in the removal of various asbestos personal injury claims for many years. Given its prior representation of G-I, G-I believes that JDP is both well qualified and uniquely able to represent it during its chapter 11 case in a most efficient and timely manner.

40. G-I has also selected McCarter & English LLP ("M&E") to assist in the resolution of G-I's environmental, insurance and personal injury claims in its chapter 11 case. M&E has assisted G-I in such capacity for many years and thus is well qualified and uniquely able to represent G-I during its chapter 11 case in a most efficient and timely manner.

41. G-I has also selected Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps") and McKee Nelson Ernst & Young ("MNE&Y") to assist in the prosecution and settlement of its pending IRS deficiency claims. Both Skadden and MNE&Y have assisted G-I with the IRS deficiency claim since the Commissioner of Internal Revenue issued a notice of deficiency to G-I on September 12, 1997. Given both firms' prior knowledge of and representation of G-I in connection with the deficiency

claims, G-I believes Skadden Arps and MNE&Y are both well qualified and uniquely able to represent it during its chapter 11 case in a most efficient and timely manner.

42. **Accountants** G-I desires to retain and employ Arthur Andersen LLP ("Arthur Andersen") as financial advisors and accountants in its chapter 11 case. Arthur Andersen is particularly well qualified for the type of representation required by G-I. Arthur Andersen is one of the largest consulting firms in the world and has experience in tax consulting and financial advisory roles for troubled and restructuring companies. Arthur Andersen is familiar with G-I's business and financial affairs and is well qualified to provide the services requested.

43. As more fully set forth in the Arthur Andersen application, Arthur Andersen will provide the following services to G-I:

- provide general tax planning and consulting services
- advise and assist G-I's management, as requested, in preparing certain financial information that may be required by the bankruptcy court and/or creditors, including monthly operating reports, schedules of assets and liabilities, executory contracts, unexpired leases, cash receipts, disbursement analyses of various asset liability accounts.

Employment of "Ordinary Course" Professionals

44. G-I seeks authorization pursuant to sections 327 and 328 of the Bankruptcy Code to retain professionals utilized by it in the ordinary course of business as of the Commencement Date and thereafter (the "Ordinary Course Professionals"), to render services similar to those services previously rendered without the need to file individual retention applications for each professional.

45. In light of the additional cost associated with the preparation of employment applications for professionals who will receive relatively small fees G-I

requests that this Court dispense with the requirement of individual employment applications and retention orders with respect to each Ordinary Course Professional, and that each professional be retained from time to time as of the Commencement Date.

46. G-I would pay each Ordinary Course Professional in the ordinary course of business 100% of its fees and disbursements provided that the fees and disbursements of each professional do not exceed on a rolling basis an average of \$30,000 per month. To the extent a professional's fees and disbursements are less than \$30,000 per month, that professional would be entitled to apply the remainder to the balance for the following month. To the extent any professional's fees during one month exceed \$30,000, the remaining balance would be added to that professional's fees for the following month. The rolling basis would not exceed a six month period.

47. G-I seeks authorization to supplement its list of professionals from time to time as necessary. G-I proposes to file such supplemental lists with the Court and to serve such lists on the United States Trustee and counsel for any statutory committee appointed in G-I's chapter 11 case pursuant to section 1102 of the Bankruptcy Code. G-I further proposes that, if no objections are filed to a supplemental list within ten (10) days after service of the list, then the retention of the professionals set forth thereon shall be deemed approved without the necessity of a hearing or entry of a further order of this Court.

48. G-I further proposes that each Ordinary Course Professional be required to file an affidavit with the Court providing necessary information in connection with their retention. G-I proposes that the Ordinary Course Professionals listed on

Exhibit A to the Application be required to file such an affidavit with the Court no later than thirty (30) days after the retention of such professionals is deemed approved.

Interim Compensation of Professionals

49. G-I has filed an application pursuant to section 105(a) and 331 of the Bankruptcy Code for establishment of an orderly, regular process for allowance and payment of compensation for two categories of professionals who will be required to file fee applications: (i) the separately retained chapter 11 professionals and (ii) those "ordinary course" professionals whose fees and expenses exceed certain limitations (together, the "Professionals").

50. The procedure proposed by G-I provides for the compensation and reimbursement of the Professionals on a monthly basis. The Professionals would be required to file with the Court and present to G-I and other designated parties a statement of services rendered and expenses incurred for each month (a "Fee Application"). If no objection is filed within fifteen days of being served with the Fee Application, G-I would submit to the Court a certificate of no objection with respect to the fees requested in the Fee Application at which time such Fee Application may be approved by the Court. In the event an objection is filed or the court otherwise requires a hearing to be held, a hearing shall be held on a date fixed by the Court.

51. Final fee applications would be filed in accordance with the ordinary course provisions of the Bankruptcy Code, Bankruptcy Rules and the local rules and orders of this Court or in accordance with such other procedures as this Court may authorize by separate order and by such deadline as may be established in a confirmed chapter 11 plan or in an order of this Court.

52. G-I has also proposed that statements of Committee members for expenses be treated consistently with the procedures described above for monthly statements and interim applications of the Professionals.

53. The procedures suggested herein will enable G-I to closely monitor the costs of administration, maintain a level cash flow, and implement efficient cash management procedures. Moreover, these procedures will also allow this Court and the key parties in interest to monitor the costs of administration and to insure the reasonableness and necessity of the compensation and reimbursement sought pursuant to such procedures.

Admission of Counsel Pro Hac Vice

54. Dennis J. O'Grady, a member in good standing of the Bar of the State of New Jersey, an attorney admitted to practice before the United States District Court for the District of New Jersey, and a member of Riker, Danzig, Scherer, Hyland & Peretti LLP ("Riker Danzig") has moved the Court to enter an Order permitting (i) Martin J. Bienenstock and Brian S. Rosen, members of the law firm of WGM and Kathryn L. Turner, an associate of the firm to practice pro hac vice before the United States District Court for the District of New Jersey.

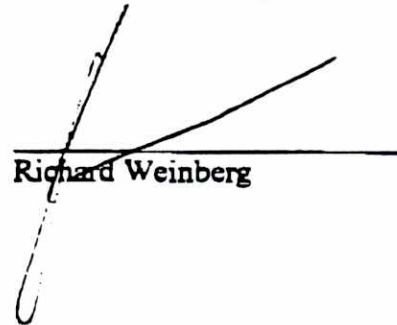
55. These lawyers are admitted to practice before, among other courts, the United States District Courts for the Southern and Eastern Districts of New York and have no disciplinary proceedings pending against them.

56. As demonstrated above, ample cause exists for granting the relief requested in each of the First-Day Orders. Such relief will expedite the administration of G-I's chapter 11 cases, promote a prompt confirmation and maximize value for all parties in interest.

III.

CONCLUSION

57. On the basis of the foregoing, I respectfully request that all of the First-Day Orders be entered.


Richard Weinberg

Sworn to before me on this
4th day of January, 2001


Notary Public

CLARA HOLDER
NOTARY PUBLIC, State of New York
No. 01H08917491
Qualified in Queens County
Commission Expires Jan. 18, 2002

(Official Form 1)(997)

| FORM 31 | | United States Bankruptcy Court District of New Jersey | |
|--|--|--|--|
| Name of Debtor (if individual, enter Last, First, Middle): O-I Holdings Inc. (f/k/a GAF Corporation) | | Name of Joint Debtor (Spouse) (Last, First, Middle): | |
| All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): (See Attached) | | All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names): | |
| Sec. Sec./Tax I.D. No. (if more than one, state all): Tax I.D. No. 22-2934562 | | Sec. Sec./Tax I.D. No. (if more than one, state all): | |
| Street Address of Debtor (No. & Street, City, State & Zip Code): 1361 Alps Road Wayne, NJ 07479 | | Street Address of Joint Debtor (No. & Street, City, State & Zip Code): | |
| County of Residence or of the Principal Place of Business: Passaic | | County of Residence or of the Principal Place of Business: | |
| Mailing Address of Debtor (if different from street address): | | Mailing Address of Joint Debtor (if different from street address): | |
| Location of Principal Asset of Business Debtor (if different from street address above): | | | |
| Verbs (Check any applicable box) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. | | | |
| Type of Debtor (Check all boxes that apply) <input type="checkbox"/> Individual(s) <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker | | Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 | |
| Nature of Debts <input type="checkbox"/> Consumer/Non-Business <input checked="" type="checkbox"/> Business | | Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay the exempt fee in installments. Rule 1006(b). See Official Form No. 3. | |
| Chapter 11 Small Business (Check all boxes that apply) <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional) | | | |
| Statistical/Administrative Information (Estimate only) <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors. | | | |
| Estimated Number of Creditors 1-15 <input type="checkbox"/> 16-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-499 <input type="checkbox"/> 500-over <input checked="" type="checkbox"/> | | | |
| Estimated Assets \$0 to \$10,000 <input type="checkbox"/> \$10,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> More than \$100 million <input checked="" type="checkbox"/> | | | |
| Estimated Debts \$0 to \$10,000 <input type="checkbox"/> \$10,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> More than \$100 million <input checked="" type="checkbox"/> | | | |

FILED
JAMES J. WALDRON
FEB 2 2001
U.S. BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
DEPUTY

JAN-22-2001 17:19

(Official Form 1X9/97)

| | | | | |
|---|--|---|--|--------------------|
| Voluntary Petition (This page must be completed and filed in every case) | | Name of Debtor(s): O-I Holdings Inc. | | Vol. 81, Page 3 |
| Location: Where Filed: | | Case Number: | | Date Filed: |
| Name of Debtor: | | Case Number: | | Date Filed: |
| District: | | Relationship: | | Judge: |
| Signature(s) of Debtor(s) (Individual/Partner) I declare under penalty of perjury that the information provided in this petition is true and correct. (If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7) I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. I request relief in accordance with the chapter of title 11, United States Code, specified in this petition. | | Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition. | | |
| X Signature of Debtor | | Signature of Authorized Individual <u>Richard A. [Signature]</u> Printed Name of Authorized Individual President and Chief Executive Officer Title of Authorized Individual <u>January 8, 2001</u> Date | | |
| X Signature of Joint Debtor | | Signature of Non-Attorney Petition Preparer I certify that I am a bankruptcy petition preparer as defined by 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document. | | |
| X Telephone Number (if not represented by attorney) | | Printed Name of Bankruptcy Petition Preparer | | |
| Signature of Attorney <u>Martin J. Blumenthal</u> <u>Warren J. Martin Jr.</u> Printed Name of Attorney for Debtor(s) X Signature of Attorney for Debtor(s) Martin J. Blumenthal, Esq. Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153 Telephone: (212) 310-8000 Dennis J. O'Grady, Esq. Warren J. Martin Jr. Riker, Danzig, Scherer, Hyland & Perretti LLP Headquarters Plaza One Spearhead Avenue Meriden, NJ 07962 Telephone: (973) 538-0800 | | Social Security Number | | |
| Date <u>January 8, 2001</u> | | Address | | |
| Exhibit A (To be completed if debtor is required to file periodic reports (e.g., Form 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11) | | Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document: | | |
| <input type="checkbox"/> Exhibit A is attached and made a part of this petition. | | If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each part of. | | |
| Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts) | | X Signature of Bankruptcy Petition Preparer | | |
| I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. | | Date | | |
| A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in a fine or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156. | | Date | | |

All Other Names used by the Debtor in the last 6 years

GAF Corporation
GAF Building Materials Corporation
G Industries Corporation
GAF Fiberglass Corporation

CERTIFICATE OF OWNERSHIP AND MERGER
OF
GAF CORPORATION
INTO
G-I HOLDINGS INC.

(Under Section 253 of the General Corporation Law of the State of Delaware)

GAF Corporation (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, does hereby certify that:

FIRST: The Corporation was incorporated on September 2, 1987 pursuant to the General Corporation Law of the State of Delaware under the name Newco Holdings, Inc.

SECOND: The Corporation is the owner of all of the issued and outstanding shares of common stock, \$.01 par value, of G-I Holdings Inc. ("G-I Holdings"), a corporation organized and existing under the laws of the State of Delaware, which was incorporated on August 5, 1988 and which has no class of capital stock outstanding other than such common stock.

THIRD: The Board of Directors of the Corporation determined to merge the Corporation into G-I Holdings effective upon the filing of this Certificate of Ownership and Merger with the Secretary of State of the State of Delaware and did adopt the following resolutions by unanimous written consent dated as of the 31st day of October, 2000:

"RESOLVED, that, in the judgment of the Board of Directors, it is in the best interest of the Corporation to merge the Corporation into G-I Holdings Inc. ("G-I Holdings"), a Delaware corporation and a wholly-owned subsidiary of the Corporation (the "Merger"), pursuant to which G-I Holdings will be the surviving corporation (the "Surviving Corporation"); and it is further

RESOLVED, that, subject to the approval of the Merger by the holders of at least a majority of the outstanding stock of the Corporation entitled to vote thereon, the Corporation shall be merged into G-I Holdings

upon the terms set forth in the following resolutions and that the effective date of the Merger (the "Effective Date") shall be the date of filing of an appropriate Certificate of Ownership and Merger with respect to the Merger with the Secretary of State of the State of Delaware; and it is further

RESOLVED, that as of the Effective Date, by virtue of the Merger, (i) the Certificate of Incorporation of G-I Holdings, as in effect immediately prior to the Effective Date, shall be the Certificate of Incorporation of the Surviving Corporation, but shall be amended, as of the Effective Date, to be identical to the Certificate of Incorporation of the Corporation as in effect immediately prior to the Effective Date until thereafter amended as provided by law, except that the corporate name of the Surviving Corporation shall remain G-I Holdings Inc., (ii) the By-laws of the Corporation, as in effect immediately prior to the Effective Date, shall be the By-laws of the Surviving Corporation until thereafter amended as provided by law, (iii) the directors and officers of the Corporation immediately prior to the Effective Date shall be the directors and officers, respectively, of the Surviving Corporation and shall hold office from the Effective Date until their respective successors are duly elected or appointed and qualify as provided in the Certificate of Incorporation and By-laws of the Surviving Corporation, or as otherwise provided by law, (iv) each issued and outstanding share of common stock, par value \$.01 per share, of G-I Holdings owned of record by the Corporation immediately prior to the Effective Date shall be cancelled and retired without any payment being made in respect thereof and shall cease to exist, and (v) each issued and outstanding share of common stock, par value \$.001 per share, of the Corporation shall automatically become one (1) share of common stock, par value \$.001 per share, of the Surviving Corporation, the certificates for which shall be issued to the stockholders of the Corporation upon surrender to the Surviving Corporation of such stockholders' certificates formerly representing such shares of common stock of the Corporation; and it is further

RESOLVED, that the Merger be submitted to the stockholders of the Corporation for approval and that upon receiving the written consent of the holders of at least a majority of the outstanding stock of the Corporation entitled to vote on the Merger, the Merger shall be approved; and it is further

RESOLVED, that the Surviving Corporation in the Merger shall notify each stockholder of record of the

Corporation within ten days after the Effective Date that the Merger has become effective; and it is further

RESOLVED, that the President, any Vice President or any other proper officer of the Corporation be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to execute and file with the Secretary of State of the State of Delaware, a Certificate of Ownership and Merger setting forth a copy of these resolutions providing for the Merger of the Corporation into G-I Holdings and the date of adoption hereof, and to take such additional action and to execute and deliver such additional agreements, documents and instruments as any of them may deem necessary or appropriate to implement the provisions of the foregoing resolutions, the authority for the taking of such action and the execution and delivery of such agreements, documents and instruments to be conclusively evidenced thereby."

FOURTH: The Certificate of Incorporation of the Surviving Corporation shall be amended at the Effective Date to read as set forth in Attachment 1 hereto.

FIFTH. The merger has been approved by the holders of at least a majority of the outstanding stock of the Corporation entitled to vote thereon by written consent without a meeting in accordance with Section 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its President this 31st day of October, 2000.

GAF CORPORATION

By: _____

Name: Richard A. Weinberg

Title: President and Chief
Executive Officer

certownship-g-i holdings(3).doc

AMENDED CERTIFICATE OF INCORPORATION
OF
G-I HOLDINGS INC.

FIRST: The name of the corporation (hereinafter called the "Corporation") is G-I Holdings Inc.

SECOND: The address, including street, number, city, and county of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware at such address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is Three Million Eight Hundred Thousand (3,800,000) shares, consisting of:

- (a) Three Million (3,000,000) shares of common stock, par value \$.001 per share (hereinafter referred to as "Common Stock"); and
- (b) Eight Hundred Thousand (800,000) shares of preferred stock, par value \$.01 per share (hereinafter referred to as "Preferred Stock").

A. **PREFERRED STOCK:** Shares of Preferred Stock may be issued from time to time in one or more series, as may from time to time be determined by the Board of Directors, each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph C of this Article FOURTH, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

- (a) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not

below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;

- (b) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes or series of the same or other classes of stock and whether such dividends shall be cumulative or non-cumulative;
- (c) The right, if any, of the holders of Preferred Stock of such series to convert the same into, or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;
- (d) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices, including, without limitation, cash, property, or rights (including securities of the Corporation or any other corporation), and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed;
- (e) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up of the Corporation;
- (f) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and
- (g) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing, include the right, voting as a series by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such other circumstances and on such conditions as the Board of Directors may determine.

B. COMMON STOCK

1. After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of Paragraph A of this Article FOURTH), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of Paragraph A of this Article FOURTH), and subject further to any other conditions which may be fixed in accordance with the provisions of Paragraph A of this Article FOURTH, then and not otherwise the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

2. After distribution in full of the preferential amount, if any (fixed in accordance with the provisions of Paragraph A of this Article FOURTH), to be distributed to the holders

of Preferred Stock in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holders of the Common Stock, subject to the rights, if any, of the holders of Preferred Stock to participate therein (fixed in accordance with Paragraph A of this Article FOURTH), shall be entitled to receive, all the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them, respectively.

3. Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to Paragraph A of this Article FOURTH, each holder of Common Stock shall have one vote in respect of each share of Common Stock held by him on all matters voted upon by the stockholders.

C. OTHER PROVISIONS

1. No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to a resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms, as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

2. The relative powers, preferences and rights of each series of Preferred Stock in relation to the powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in Paragraph A of this Article FOURTH, and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to Paragraph A of this Article FOURTH that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

3. Subject to the provisions of subparagraph 2 of this Paragraph C, shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

4. Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

5. The authorized amount of shares of Common Stock or of Preferred Stock, without a class or series vote, may be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

FIFTH: The Corporation is to have perpetual existence.

SIXTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

SEVENTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, it is further provided:

1. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the By-Laws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the Corporation would have if there were no vacancies. No election of directors need be by written ballot.
2. After the original or other By-Laws of the Corporation have been adopted, amended, or repealed, as the case may be in accordance with the provisions of Section 109 of the General Corporation Law of the State of Delaware, and, after the Corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the By-Laws of the Corporation may be exercised by the Board of Directors of the Corporation; provided, however, that any provision for the classification

of directors of the Corporation for staggered terms pursuant to the provisions of subsection (d) of Section 141 of the General Corporation Law of the State of Delaware shall be set forth in an initial By-Law or in a By-Law adopted by the stockholders entitled to vote of the Corporation unless provisions for such classification shall be set forth in this Certificate of Incorporation.

3. Whenever the Corporation shall be authorized to issue only one class of stock, each outstanding share shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders. Whenever the Corporation shall be authorized to issue more than one class of stock, no outstanding share of any class of stock which is denied voting power under the provisions of the certificate of incorporation shall entitle the holder thereof to the right to vote at any meeting of stockholders except as the provisions of paragraph (2) of subsection (b) of Section 242 of the General Corporation Law of the State of Delaware shall otherwise require; provided, that no share of any such class which is otherwise denied voting power shall entitle the holder thereof to vote upon the increase or decrease in the number of authorized shares of said class.

EIGHTH: The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by paragraph (7) of subsection (b) of Section 102 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented.

NINTH: The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and the Indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

TENTH: From time to time any of the provisions of this certificate of incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this certificate of incorporation are granted subject to the provisions of this Article TENTH.